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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8590 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

S. V. JATKAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8590 of 1990

MR MR ANAND for Petitioner No. 1-2

MR ND GOHIL, AGP, for Respondent No. 1-2

MR BV ANTANI for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 27/10/2004

ORAL JUDGEMENT

In the present petition, the petitioners have challenged the seniority lists to the posts of Head Clerk

and Office Superintendent to the extent the respondent No.3 is shown senior to the petitioners.

2. Short factual background which is seriously not in dispute is that both the petitioners were admittedly junior to the respondent No.3 in the cadre of Head-Clerk cum-Accountant. The respondent No.3 also received further promotion to the post of Head-Clerk ahead of the petitioners. The petitioner No.1 was promoted to the post of Head Clerk on 16.10.78 and the petitioner No.2 was promoted to the post of Head Clerk on 15.1.81, but pursuant to the Court order he was granted deemed date of promotion of 20th October 1978. It is not in dispute that the respondent No.3 was already promoted to the post of Head-Clerk when the petitioners received their promotions. However, the respondent No.3 requested for being reverted to the lower post of Head Clerk-cum-Accountant and was so reverted with effect from 1.5.76 since he did not want to accept the transfer liability owing to his family circumstances. The respondent No.3 was thereafter promoted as Head-Clerk only from 15.10.81. Thus there is a gap of more than five years in the tenure of the respondent No.3 to the post of Head Clerk. Subsequently, further promotions were granted to the petitioners as well as to respondent No.3 to the post of Office Superintendent. The petitioners were promoted as Office Superintendent in April 1982 whereas the respondent No.3 was promoted to the same post in September 1982.

3. It is the grievance of the petitioners that though both the petitioners were promoted to the post of Office Superintendent earlier than the respondent No.3, the respondent No.3 is sought to restore the seniority ahead of the petitioners. The petitioners also contend that since the respondent No.3 had himself voluntarily accepted reversion to the lower post of Head-Clerk-cum-Accountant, he could not have been permitted to retain his seniority in the cadre of Head Clerk also.

4. The petitioners have pointed out that despite the position being as above, the respondent Nos.1 & 2 issued the seniority list to the post of Head-Clerk as at Annexure C showing the respondent No.3 senior to the petitioners without calling for objections and without circulating draft seniority list.

5. It is also pointed out that the seniority list to the post of Office Superintendent was also modified showing the respondent No.3 senior to the petitioners

which could not have been legally done. The petitioners have stated that though objections were raised by the petitioners to this amendment in the seniority list of the post of Office Superintendent, the respondent Nos.1 & 2 ignoring the objections of the petitioners have granted seniority to the respondent No.3 over the petitioners, which is contrary to the factual position.

6. Respondent No.3 had filed his affidavit in reply in which the factual aspects are not seriously disputed. In fact, respondent No.3 has admitted that he had accepted reversion to the lower post of Head-Clerk-cum-Accountant due to adverse family circumstances. He has, however, stated that he never agreed to forego his promotion to the post of Head Clerk on permanent basis.

7. Learned AGP appearing on behalf of the official respondents has tendered on record an unaffirmed affidavit in reply in which also, the factual aspects of the matter are not disputed. In fact, it is stated that willingness of the respondent No.3 was called for by the letter dated 2.9.78 for being placed on the higher post of Head Clerk but the respondent No.3 had not submitted his willingness within the stipulated time and thereafter also he submitted a vague reply and therefore, the respondent No.3 was not considered for promotion to the post of Head Clerk. It is, however, submitted that non-promotion of the respondent No.3 after the year 1978 was due to oversight and therefore the respondent No.3 was sought to be restored his seniority. The stand of the respondents including that of the respondent No.3 does not appeal to the Court.

8. The respondent No.3 himself had opted for reversion to avoid transfer liability on account of his family circumstances and remained in the lower post of Head-Clerk-cum-Accountant for the period between 1.5.76 to 15.10.81. Even in the year 1978, when the Government called for his desire to be promoted back to the post of Head-Clerk, he did not respond within time and his reply was not unequivocal. There was, therefore, no occasion to consider the respondent No.3 for promotion to the post of Head-Clerk when the petitioners were considered and so promoted. The respondent Nos. 1 & 2 therefore erred in restoring the seniority of the respondent No.3 in the cadre of Head-Clerk when he had voluntarily accepted reversion and not worked on the higher post of Head Clerk for more than five years. Later on the petitioners were also promoted to the next higher post of Office Superintendent ahead of the respondent No.3. There was,

therefore, no scope for restoring the seniority of the respondent in the higher cadre of Office Superintendent also.

9. In conclusion, I find that the respondent Nos.1 & 2 erred in amending the seniority list to the cadre of Head Clerk and Office Superintendent by showing respondent No.3 senior to the petitioners. To that extent, therefore, the seniority lists are illegal and unlawful and are required to be quashed and set aside.

10. In the result, the petition is allowed. The seniority lists at Annexure C and D-1 of the cadre of Head-Clerk and Office Superintendent respectively in so far as the same show the respondent No.3 senior to the petitioners are quashed and set aside and the petitioners will be shown senior to the respondent No.3 in the cadres of Head Clerk and Office Superintendent. The respondents Nos.1 & 2 are directed to carry out the corrections in the seniority lists accordingly. The petitioners will be entitled to all consequential benefits of such corrections in the seniority lists. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)
(vjn)